

WATER COUNCIL MEETING

Dept. of Environmental Services
29 Hazen Dr., Concord, N.H.

December 14, 2005
9:00 a.m.

Members present: Councilors Bridges, Bradley, Butler, Cowan, Densberger, DiMarzio, Frost, Lussier, Lyons, Patenaude and Varotsis

Members absent: Councilors Barrett, Dupee, Glines, Ingham and Phillips

John Bridges, Chairman, called the meeting to order at 9:00 a.m.

1. Approval of Minutes of November 9, 2005 Meeting

A motion was made by Councilor Varotsis to accept the minutes of the November 9, 2005 meeting as presented. The motion was seconded by Councilor Bradley and unanimously voted.

2. Rules:

Env-Ws 420 Groundwater Reclassification Rules

Paul Susca of the Water Supply Engineering Bureau presented the proposed amendments to the groundwater reclassification rules. Comments on the proposed rules can be forwarded to the Water Supply Engineering Bureau for an additional 15 days.

Env-Ws 700 Standards of Design and Construction for Sewerage and Wastewater Treatment Facilities

Sharon Nall, P.E., Design Review Engineer of the Wastewater Engineering Bureau, reviewed the proposed design standard rules. A workgroup comprised of wastewater engineering consultants was formed in October 2004 to assist with drafting the proposed rules, which have undergone substantial revision. The public comment period ends Friday, January 27, 2006.

3. Status of Appeals

Michael Sclafani distributed an Appeals Status Report and reviewed pending appeals with the council.

- **Docket No. 03-10 WC - Appeal of Conservation Law Foundation**

On November 9, 2005 the council voted to deny this appeal. The written Decision & Order has not been issued.

- **Docket No. 03-14 WC - Appeal of Gerald A. Bell**

A stay remains in effect on this appeal pending the resolution of a declaratory judgment action before the Merrimack County Superior Court. A second status conference is scheduled with the court in December, after which a trial will be scheduled.

- **Docket No. 04-05 WC - Appeal of Freudenberg-NOK General Partnership**

A consented-to stay remains in effect on this appeal pending a ruling by the Grafton County Superior Court on the state's petition for declaratory judgment. The parties have resumed settlement discussions.

- **Docket No. 04-18 WC - Appeal of Thaddeus Dymon**
A stay remains in effect pending the resolution of a boundary line dispute in Sullivan County Superior Court. Mr. Sclafani added that a trial is tentatively set for the end of May 2006.
- **Docket No. 04-19 WC - Appeal of Town of Newport**
See Docket No. 04-18 above.
- **Docket No. 05-07 WC - Appeal of FOCUS Tamworth**
On December 1, 2005 the appeal was withdrawn as the parties have reached a settlement.
- **Docket No. 05-16 WC - Appeal of Pollard Realty Trust**
A pre-hearing conference was held on December 5, 2005 and an appeal hearing is scheduled for February 8, 2006.
- **Docket No. 05-17 WC - Appeal of Daniel Osborn**
A pre-hearing conference was held on December 5, 2005 and an appeal hearing is scheduled for March 8, 2006. On December 12, 2005, a Motion to Recuse Vice Chairman F. Wayne DiMarzio was filed by DES.

A motion was made by Councilor Varotsis to grant DES' Motion to Recuse Vice Chairman F. Wayne DiMarzio. Councilor Frost seconded the motion and it was unanimously voted.

Chairman Bridges will act as hearings officer at the appeal hearing scheduled for March 8, 2006.

- **Docket No. 05-21 WC - Appeal of Save Our Groundwater**
This is an appeal of a decision issued on October 25, 2005 by DES to USA Springs, Inc. to conditionally approve three wells as sources for bottled water. The Notice of Appeal was filed on November 23, 2005. On December 5, 2005, Attorney Edward Mosca filed an appearance on behalf of the applicant along with a Motion to Intervene. On December 7, 2005, Attorney Jennifer Patterson filed an appearance on behalf of DES.

A motion was made by Councilor Varotsis to table a decision on this appeal until the council receives an opinion on jurisdiction from the Attorney General's Office. Councilor Butler seconded the motion and it was unanimously voted.

Councilors Varotsis, Densberger and Butler will contact the Attorney General's office for an opinion on issues including, but not limited to, the following (1) if the appellant loses its appeal in court, are the appeals before the council moot (Docket Nos. 05-21 WC and 05-22 WC); (2) does SOG have standing to appeal before the council; and (3) does the opinion of the Attorney General in the previous appeal that the council does not have jurisdiction apply to this appeal. The councilors will plan to report back to the Council at its January meeting.

- **Docket No. 05-22 WC - Appeal of Town of Nottingham**

This is an appeal of a decision dated October 25, 2005 issued by DES to USA Springs, Inc. to conditionally approve three wells as sources for bottled water. The Notice of Appeal was filed on November 23, 2005. On December 5, 2005, Attorney Edward Mosca filed an appearance on behalf of the applicant along with a Motion to Intervene. On December 7, 2005, Attorney Jennifer Patterson filed an appearance on behalf of DES.

A motion was made by Councilor Varotsis to table this appeal until the council receives an opinion on jurisdiction from the Attorney General's Office. Councilor Butler seconded the motion and it was unanimously voted.

4. **Instream Flow Pilot Studies for Souhegan and Lamprey Rivers Presentation**

Wayne Ives, P.G., Instream Flow Specialist in the Watershed Management Bureau, described the instream flow pilot program. DES is required to put instream flow rules into place for rivers which have been legislatively designated as having a higher level of protection. The Souhegan River pilot study was funded by the legislature and the Lamprey River was funded by NOAA. The purposes of the studies are to identify instream protected uses, outstanding characteristics and resources of designated rivers defined in legislation, assess IPUOCR flow needs, and document results of the Protected Instream Flow Assessment. Two components of the studies are to define what is needed for protected flows and to manage the flows through plans for water conservation, dam management, and water use. It is anticipated that the Souhegan River Protected Flows will be completed in April 2006 and the Water Management Plan in July 2006. The Lamprey River protected flows will be complete in February 2007 and the Water Management Plan in August 2007.

5. **Legislative Update**

Harry T. Stewart, P.E., Director, Water Division, stated that there are two additional LSRs which relate to groundwater issues. Mr. Stewart expects to have bill language available for distribution at the council's January meeting.

6. **Other Business**

There is no other business to come before the council.

7. **Next Meeting**

The next meeting will be held on January 11, 2006.

8. **Adjournment**

A motion was made by Councilor Varotsis to adjourn. The motion was seconded by Councilor Bradley and unanimously voted.

The meeting adjourned at approximately 11:15 a.m.